

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 07, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THOMAS W. S. RICHEY,

Plaintiff,

v.

STEVEN SINCLAIR and TRACY
SCHNEIDER,

Defendants.

NO: 2:21-CV-107-RMP

ORDER DENYING LEAVE TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING ACTION

On March 24, 2021, the Court directed Plaintiff Thomas W. S. Richey, a *pro se* prisoner at the Airway Heights Corrections Center, to show cause why the Court should grant his application to proceed *in forma pauperis*. ECF No. 8 at 4. In the alternative, Plaintiff could have paid the \$402.00 filing fee. *Id.*

On March 31, 2021, Plaintiff filed a document titled, "Show of Cause to Support Waiver of Filing Fee." ECF No. 9. After careful review of Plaintiff's submission, the Court finds that Plaintiff has failed to demonstrate that he was under imminent danger of serious physical injury when he initiated this case, and is thus

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING ACTION -- 1

1 precluded under 28 U.S.C. § 1915(g) from proceeding in this action without
2 prepayment of the filing fee. *See O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir.
3 2008).

4 Plaintiff does not dispute the Court’s finding that he filed three or more
5 actions while a prisoner that were dismissed as frivolous, malicious or for failure to
6 state a claim upon which relief may be granted. *See* ECF No. 8 at 2. Rather, he
7 seeks an exception to the application of 28 U.S.C. § 1915(g), asserting that “For as
8 long as an advertisement [i.e., a published case in which Plaintiff admitted to being
9 an informant] exists in the law library computer system, notifying all that Richey
10 was an informant, he remains in imminent danger of being assaulted by other
11 inmates. This information essentially gives general population inmates a “green
12 light” to take Richey out. This is simply a reality of prison life. Imminent danger is
13 created by informing the prison populace than an inmate worked as an informant.”
14 ECF No. 9 at 2.

15 Nevertheless, Plaintiff admits that when he filed this action on March 5, 2021,
16 COVID-19 restrictions still limited the movement of prisoners and their access to the
17 law library. ECF No. 9 at 2. He also avers that after he “received word” that
18 “whiteboys” were “stirring things up,” he was moved to another unit where, at the
19 time he submitted his response on March 31, 2021, his identity was unknown.
20 Liberally construing his assertions in the light most favorable to Plaintiff, the Court
21 finds that he was failed to overcome the preclusive effects of 28 U.S.C. § 1915(g).

1 Because Plaintiff did not avail himself of the opportunity to pay the \$402.00 filing
2 fee, he may not proceed with this action.

3 Accordingly, **IT IS HEREBY ORDERED:**

- 4 **1.** Plaintiff's Motion for Waiver of Filing Fee, **ECF No. 2**, and his
5 application to proceed *in forma pauperis*, **ECF No. 6**, are **DENIED**.
- 6 **2.** This action is **DISMISSED WITHOUT PREJUDICE** for non-
7 payment of the filing fee as required by 28 U.S.C. § 1914.
- 8 **3.** All pending motions are **DENIED AS MOOT**.
- 9 **4.** The District Court Clerk shall **CLOSE** the file.
- 10 **5.** The Court certifies any appeal of this dismissal would not be taken in
11 good faith.

12 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
13 Order, enter judgment, and provide copies to Plaintiff.

14 **DATED** May 7, 2021.

15
16 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
17 United States District Judge
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